



Appeal Decision

Inquiry held on 09 March 2004

Site visit made on 10 March 2004

by Felix Bourne BA(Hons) LARTPI Solicitor

an Inspector appointed by the First Secretary of State

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Date

08 APR 2004

Appeal Refs: APP/V1505/C/03/1130204-08; 10-12; and 14-20

Land at Dale Farm, Oak Lane, Crays Hill, Billericay, Essex (NOTICE 1)

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by James Culligan, Bridget Quilligan, Dan Sheridan, Bridget Sheridan, Helen Sheridan, Margaret Sheridan, Mary Sheridan, Kathleen Sheridan, Margaret Gore, John Sheridan, Jean Sheridan, Nora Egan, James McCarthy, Mrs McCarthy, and Margaret McCarthy against an enforcement notice issued by Basildon District Council.
- The Council's reference is 03/00087/NOTICE.
- The notice was issued on 18 September 2003.
- The breach of planning control as alleged in the notice is, without planning permission, (i) the change of use of the land for the deposit of hardcore and road scalplings, and (ii) the change of use of the land for the siting of caravans and their use for residential purposes.
- The requirements of the notice are to (i) stop using the land for the deposit of hardcore and road scalplings; (ii) stop using the caravans for residential purposes; (iii) remove all caravans from the land; (iv) remove all hardcore and road scalplings from the land; and (v) recultivate the land by levelling and reseedling with grass seed.
- The periods for compliance with the requirements are, for step (i), 3 days after the Notice takes effect whereas, with regard to steps (ii), (iii), and (iv) the date specified for compliance is 13 May 2005 whilst, for step (v), it is 13 June 2005.
- The appeals are proceeding on the grounds set out in section 174(2)(g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period, the deemed applications for planning permission do not fall to be considered.

Summary of Decision: The appeals are dismissed and the enforcement notice upheld.

Appeal Refs: APP/V1505/C/03/1130221-35; 37-42; and 94-95

Land to the east of Dale Farm, Crays Hill, Billericay, Essex (NOTICE 2)

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Michael Sheridan, Kathleen Sheridan, James O'Brien, Anita Sheridan, Kathleen O'Brien, Danny Gore, Nora Gore, Margaret Slattery, Helen Sheridan, Norah Slattery, Kathleen Flynn, Tom Sheridan, Mary Sheridan, Tom Flynn, Norah Flynn, Michael Quilligan, Philamena Quilligan, James Sheridan, Mary Sheridan, Patrick Sheridan, Mary Sheridan, Margaret Gamell, and Norah Sheridan against an enforcement notice issued by Basildon District Council.
- The Council's reference is 03/00086/NOTICE.
- The notice was issued on 18 September 2003.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the land for the siting of caravans and their use for residential purposes.
- The requirements of the notice are to (i) stop using the caravans for residential purposes and (ii) remove all caravans from the land.
- The period for compliance with the requirements, specified as a date, is 13 May 2005.
- The appeals are proceeding on the grounds set out in section 174(2)(g) of the 1990 Act. Since the

prescribed fees have not been paid within the specified period, the deemed applications for planning permission do not fall to be considered.

Summary of Decision: The appeals are dismissed and the enforcement notice upheld.

Preliminary Matters

1. The appeal sites are located within an area of Basildon district known as Crays Hill. This is a former plotland settlement which is centrally located within the District, to the north of Basildon New Town and the A127 London to Southend-on-Sea trunk road, and midway between the urban settlements of Billericay to the west and Wickford to the east. The appeals relate to two parts of a larger site, accessed off Oak Lane, a private road which leads from Oak Road, a narrow, largely single-width, lane with occasional passing places.
2. Together the appeal sites have an overall area of a little over 1.5 hectares or thereabouts, and they have each been subdivided into a number of pitches, or plots, together with access roads to those plots, for use for residential purposes. The sites are part of a larger area in respect of which the Council took enforcement action in 2002 and which were the subject of appeals that I heard in January 2003 at a public inquiry (the 2003 Inquiry) (reference APP/V1505/C/02/108801 and others). However, there is also an authorised gypsy site which, like the unauthorised sites, gains its main vehicular access from Oak Lane and Oak Road.
3. The First Secretary of State issued his decisions arising from the 2003 Inquiry in May 2003. Consistent with my recommendations he refused the grant of planning permission, upholding some of the enforcement notices subject of those appeals, but with extended periods for compliance. However, he found two enforcement notices to be nullities and, as a consequence, the Council have issued and served fresh enforcement notices to replace those found to be nullities and, in so doing, they have built in compliance dates consistent with that for the enforcement notices which took effect with the issue of the First Secretary of State's decisions on 13 May 2003.

The Ground (g) Appeals

4. Moving, therefore, to the ground of appeal cited, ground (g) arises where an appellant seeks to argue that a period, or periods, for compliance, fall(s) short of what should reasonably be allowed. In relation to each Notice, and all of the appellants, the ground (g) appeal was based on the following:

"On 13th May 2003, both the Secretary of State and the Planning Inspectorate agreed that due to the lack of provision locally and Nationally for Gypsy sites, the Appellants should be given 2 years to find alternative accommodation. No additional provision has been provided Nationally or locally so additional 2 year period is required."

Possible access improvements

5. One of the objections that I identified at the previous Inquiry, and accepted to exist by the First Secretary of State, was the unsatisfactory access to the site. A major part of the appellants' evidence related to a possible development scheme which, it was argued, could result in road improvements which would provide Oak Lane with easy vehicular access on and off the A127, so that traffic to and from the appeal sites, and other neighbouring sites, would not have to use Oak Road, which is patently unsuitable for heavy traffic.

6. The proposed development, which would be at Gardiners Lane South, to the south of the A127, would be a substantial scheme. Policy BAS E1 of the Local Plan, adopted in 1998, provides for the comprehensive development of this area for a number of purposes, and there has been public consultation leading to the adoption of Supplementary Planning Guidance (SPG) in the summer of 2003. I note, from an internal memorandum sent by the Council's Strategic Development Co-ordinator to the Development Control Manager, that it is expected that a planning application will be submitted in the Autumn. On the other hand, the Council's SPG suggests that this will be an outline application, pointing to the need for the preparation of an Environmental Statement to accompany the outline planning application, to assess the potential impact of the development. Indeed an Environmental Scoping Study is called for by the Council, to be used to identify what impacts should be measured in the Environmental Statement. An Agreement under section 106 of the Town and Country Planning Act 1990 is also referred to, to cover matters including the provision of infrastructure.
7. There is also the question of land ownership. Whilst some properties have been purchased with a view to the redevelopment occurring, ownership is still fragmented and it remains a possibility that compulsory purchase powers may need to be exercised. The Council indicated that there is also uncertainty as to financing.
8. Thus, even if the scheme were to proceed, it is clearly some way from implementation and, whilst common-sense would suggest that the necessary infrastructure may be provided at an early stage, I see no reason to question the assessment of the Council's witness that the development is probably at least five years away.
9. Even then, there is doubt as to whether the scheme would improve the access from Oak Lane in a manner to allow easy vehicular access to and from the A127. This is because the Council believe that the only rights that exist along Oak Lane are for use as a footpath or, perhaps, as a bridleway. On the other hand, they recognise that Oak Lane, which is a private road, is in fact used for vehicular traffic and that an access link onto the A127 was created, without formal consent, around 10 years ago. Accordingly, they have considered it important that the option of maintaining that link be considered as part of the junction design for the new A127 junction. Nevertheless, no decision has been made as to the status of the new link, or whether or not it will be for motorised vehicles.
10. There is thus uncertainty as to whether the Gardiners Lane South development will proceed, what time-scale it might proceed in, and whether it would result in an improvement to the Oak Lane access onto the A127 for vehicular traffic. Accordingly I consider that I can afford this consideration little weight and feel reinforced in that view by the fact that access was in any event not the only objection, and that to provide an improved access would do nothing to overcome the Green Belt objection identified in my previous Report, and again accepted to exist by the First Secretary of State.

Other matters

11. It was also suggested that, since the time of the 2003 Inquiry, no further **provision for gypsy sites** has been made and that it has, if anything, become more difficult to find alternative sites. As I identified at the 2003 Inquiry it must be undesirable that the occupants of this site should either be forced to resort to unauthorised camping on an itinerant basis, or that they should transfer to other land in the vicinity, with the prospect of

the whole enforcement process starting again. However, the evidence presented in relation to the current appeals was largely anecdotal and in any event the precise number of sites available at any time is, it seems to me, liable to change. Moreover, the general shortage of sites was a factor which led to my recommendation, accepted by the First Secretary of State, of what was an unusually long period for compliance with enforcement notices.

12. The appellant's agent did not present any evidence in relation to the current appeals relating to the **needs of individual appellants**, though the Report arising from the 2003 Inquiry is before me as a document, and a few of the current appellants gave evidence at that Inquiry. However, I heard evidence from one of the residents at Dale Farm, albeit not an occupier of either of the appeal sites. Mr Slattery appeared on his own behalf and spoke with conviction and sincerity, with emphasis on his wish to secure a good education for his son and to resolve any problems that local residents may be experiencing.
13. The recent High Court judgement in the case of *Chelmsford B C v The First Secretary of State and Draper*, in which judgement was given on 25 November 2003, indicates that educational needs on their own do not constitute very special circumstances, within the meaning of the Government's Planning Policy Guidance on Green Belts (PPG2), which could justify the grant of planning permission for inappropriate development in the Green Belt. On the other hand, it must remain the case that it would be undesirable unnecessarily to disrupt the schooling of any children living on the appeal sites. However, this aspect was again fully taken into account at the time of the 2003 Inquiry, and in the decisions arising therefrom.
14. Nevertheless, the appellants' argument is, in effect, that, **if a two year period for compliance was appropriate at that time, it remains so now**. At first sight that does not seem unreasonable, but it seems to me important to view the current enforcement notices in context. They have not come "out of the blue", but are the result of the First Secretary of State's findings that earlier enforcement notices in relation to the same sites were nullities. In the meanwhile other Notices, in relation to neighbouring land, have taken effect and require compliance by 13 May 2005. Bearing in mind the decisions reached by the Secretary of State in relation to those appeals, and in particular as to the planning merits, the occupiers of the appeal sites must have anticipated that further enforcement action would be taken, for whilst some may lack formal education, they did have professional advice.
15. Whilst on my site inspection, I gained the strong impression that some residents of the unauthorised sites as a whole are consolidating their position, undertaking further development in spite of the decisions reached in relation to the previous appeals. This is unfortunate. The lengthy period for compliance that I recommended was intended to provide a real opportunity to identify, and to move to, other suitable alternative sites. As stated in my earlier Report, it should not have been seen as a green light for further development on the site.
16. That said, Mr Slattery expressed the view that the numbers living there were about the same as last year, that a few had left, and that others were looking for alternative sites. This was treated with some scepticism by local residents, and by the Council, but it may be that the further consolidation being undertaken by some has resulted in the impression being gained that numbers on the sites are continuing to rise. I am therefore slightly encouraged that some are making a real attempt to comply with the effective notices.

17. The period remaining for compliance with the effective enforcement notices is something over a year, which in itself is a not inconsiderable length of time, and it seems to me that, in the circumstances outlined above, this is also a reasonable period for compliance with the enforcement notices subject of these appeals. I am not therefore persuaded that the period for compliance should be extended to two years, bearing in mind the planning objections to the development, which were identified at the 2003 Inquiry and which remain as valid now as they did then. Moreover, whilst this has not affected my decision, it seems to me that to extend the period for compliance in relation to these sites, beyond those where enforcement notices have already taken effect, could encourage the occupants of those pitches to remain after their compliance period has passed.
18. Whilst I am sure that Mr Slattery was sincere in his wish to resolve any problems that may have arisen, I am reinforced in that view by the **evidence of a number of local residents**. Most of those who spoke at the Inquiry clearly had some sympathy for the difficulties facing the occupants of the unauthorised sites, and an understanding of their aspirations. Nevertheless they presented convincing evidence that they continued to experience problems, including problems arising from the over-use of Oak Road, from noise, from dumped and discarded rubbish, from fires, and from other anti-social behaviour. They left me in no doubt that such aspects, of which I heard at the 2003 Inquiry, continue to harm living conditions, particularly of those living in parts of Oak Road.
19. On the site inspection, I saw for myself something of the significant levels of traffic generated by the occupation of the sites as a whole. I also saw the damage that has been caused to Oak Road, including to the verges, and the amount of litter that has been deposited at the side of the road, often in the ditches. I cannot, of course, say that these problems have all arisen from the occupants of the unauthorised sites, let alone the two sites subject of the current appeals. However, at the 2003 Inquiry, there was consensus between the two main parties that Oak Road was sub-standard for the amount of traffic that it was then carrying and common-sense dictates that occupation of the two appeal sites must contribute to the levels of traffic that have resulted in such problems.
20. Looking at the question of **human rights**, even if I were to allow the appeals, the decisions would only delay, and not prevent, the loss of the appellants' existing pitches. I have nevertheless carefully considered the human rights of the appellants but have concluded that the period for compliance allowed by the Council strikes an appropriate balance between the interests of the appellants and the interests of the community as a whole, bearing in mind the planning objections to the development. In the light of this it seems to me that the other periods for compliance, referred to in Notice 1, may also be seen as reasonable.

Conclusions

21. Accordingly, for the reasons given above, and having regard to all other matters raised, I consider that the appeals should be dismissed and the notices upheld.

Formal Decisions

22. In exercise of the powers transferred to me, I dismiss the appeals and uphold the enforcement notices.

Information

23. A separate note is attached setting out the circumstances in which the validity of any of these decisions may be challenged by making an application to the High Court.



FELIX BOURNE
Inspector

